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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/726,690

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Senya Yamanaka

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EXAMINER

STULII, VERA

ART UNIT

PAPER NUMBER

1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/25/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/726,690	Applicant(s) YAMANAKA, SENYA	
	Examiner Vera Stulii	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: whenever temperature ranges are disclosed the temperature units (degrees Celsius or Fahrenheit) are missing. Applicant is cautioned against the introduction of new matter to the application.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the temperature range, however the temperature units (degrees Celsius or Fahrenheit) are missing.

In claims 7, it is unclear as to what is intended by the phrase "adding water to Koji from germinated brown rice". It is unclear if this is intended to mean "adding water to Koji made from germinated brown rice", or else. In claim 8, it is unclear as to what is intended by the phrase "mixing another Amazake made by polished rice". It is unclear if this is intended to mean "mixing another Amazake made from polished rice".

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over **coldmountainmiso.com** (hereinafter referred to as CMM) in view of Sato Hisakatsu (JP 2001231501) and North American New Product Report.

CMM discloses a method of making Amazake. CMM also discloses producing Koji (molded rice) made from white or brown cooked rice. CMM also discloses keeping/fermenting Koji (molded rice) at 60 °C (140 °F) for 10 to 14 hours, which is in the same range as claimed. CMM discloses that the mixture is kept under those conditions until it has "rich, sweet fragrance". CMM also discloses smashing Amazake ("stir well with a fork or several chopsticks to create a porridge-like consistency, or ... puree in a blender or sieve"). CMM also places the Amazake into containers. CMM teaches making Amazake from either polished or brown rice.

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CMM does not disclose brown rice being germinated, container members being sealed, adding water to Koji, mixing with Amazake made from polished rice, removing some of the outer part of the rice.

Sato Hisakatsu discloses producing Amazake ("a sweet beverage made from the fermented rice") by fermenting germinated brown rice. Sato Hisakatsu discloses "utilizing medicinal components and γ -aminobutylic acid included in a germinated brown rice" in order to produce a "healthy liquor" (Abstract).

North American New Product Report discloses an Amazake beverage that is marketed in plastic bottles, which would of necessity have to be sealed.

Since CMM discloses a method of making Amazake, and Sato Hisakatsu discloses producing Amazake by fermenting germinated brown rice, it would have been obvious to one of the ordinary skill in the art to modify disclosure of CMM and use germinated brown rice in order to increase nutritional value of Amazake as taught by Sato Hisakatsu. Since CMM also discloses placing the Amazake into containers, and North American New Product Report discloses an Amazake beverage that is marketed in sealed plastic bottles, it would have been obvious to one of the ordinary skill in the art to modify disclosure of CMM and use sealable container members for marketing purposes as taught by North American New Product Report. It would also have been obvious to add water to Koji rice in order to start the fermentation process. Since CMM teaches making Amazake from either polished or brown rice, it would have been obvious to combine Amazake made from polished rice with Amazake made from germinated brown rice to take advantage of the conventionally known and beneficial

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properties of each to obtain a beverage having a good taste and high nutrient value. For example, it was accepted in the art that polished rice has more appealing taste, whereas brown rice inherently has more nutrient value. In regard to claims 9 through 12, which recite removing some of the outer part of the rice, it was known to polish or partly polish rice; and since brown rice has a higher nutritional value due to the bran and other outer layers, one of ordinary skill in the art would have been amply motivated to keep as much of these layers as possible within the composition in order to impart these nutrients to the resultant Amazake.

Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato Hisakatsu (JP 2001231501) in view of **coldmountainmiso.com** (hereinafter referred to as CMM) and North American New Product Report.

Sato Hisakatsu, CMM and North American New Product Report are taken as cited above.

Sato Hisakatsu does not teach the specific method steps of making Amazake, container members being sealed, mixing with Amazake made from polished rice, removing some of the outer part of the rice.

Since Sato Hisakatsu does not teach the specific method steps of making Amazake, one of ordinary skill in the art would have been motivated to turn to the art to utilize a reference for such a known protocol, such as CMM. It would have been obvious to one of the ordinary skill in the art to modify disclosure of Sato Hisakatsu and to use sealed container members, combine Amazake made from polished rice with Amazake

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made from germinated brown rice, and to remove some of the outer part of the rice for the reason stated above.

Response to Arguments

Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VS

V. Stulz

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
1/22/07